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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACQUELYN HARRIS, LORA MOTE, and
COURTNEY COLIANNA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

RWS ENTERPRISES WHICH WILL DO
BUSINESS IN CALIFORNIA AS KIDDIE
KANDIDS, INC., and DOES 1 through 50,
inclusive,

Defendants.

Case No.: C 08-00852 PJH
Honorable Phyllis J. Hamilton

CLASS ACTION

**DECLARATION OF RANDALL CRANE
IN SUPPORT OF PLAINTIFFS' MOTION
TO REMAND TO STATE COURT**

JURY TRIAL DEMANDED

HEARING:

Date: April 2, 2008

Time: 9:00 a.m.

Judge: Honorable Phyllis J. Hamilton

Action Filed: January 4, 2008

I, RANDALL CRANE, do hereby declare and state as follows:

1. I am an attorney licensed to practice before the Courts of the State of California. I am admitted to practice before the United States District Court for the Northern District of California. I am a partner at the Law Office of Randall Crane, the attorney of record for Plaintiffs herein. This declaration is submitted in support of Plaintiffs' Motion to Remand to State Court.
2. On or about January 4, 2008, Named Plaintiffs filed a class action complaint against Defendant in the Superior Court of California, Alameda County (the "Complaint"). A true and

1 correct copy of the Complaint is attached hereto as Exhibit 1.

2 3. The Complaint alleges violations of the California Labor Code and California Business
3 and Professions Code; the Complaint does not allege violations of federal law. (Exhibit 1)

4 4. The Complaint neither seeks a specific amount of money nor specifies a dollar value for
5 the damages sustained. (Exhibit 1)

6 5. As defined in the Complaint, the class members are "all of Defendant's employees who,
7 at any time within the four years prior to filing . . . were classified by Defendant as 'managers' or
8 a similar or equivalent designation, and who were deemed by Defendant as exempt from
9 receiving overtime compensation, yet who did not customarily and regularly direct the work of
10 two or more other employees or who otherwise did not meet the legal definition for overtime
11 exemption under California law." (Exhibit 1, page 2, ¶ 3) The Complaint does not make claims
12 concerning any of Defendant's employment practices outside the State of California.

13 6. Based on the Declaration of Lora Mote, Defendant operates 31 different store locations in
14 the State of California and Defendant employs one "manager" at each store. The proposed class
15 therefore consists of the 31 current managers, plus any other individual who worked as a
16 manager within the four years preceding the filing of this complaint. Even given a high manager
17 turnover rate, the upper limit of the class is 50 people.

18 7. Based on the Declaration of Lora Mote, many of Defendant's store locations within
19 California have recently opened. Many proposed class members have therefore been employed
20 for only a portion of four-year class period, which commences on January 8, 2004.

21 8. In its Notice of Removal Defendant alleged diversity jurisdiction. Using Plaintiff Lora
22 Mote as an example, Defendant assigned dollar values to her claims and alleged her damages to
23 be approximately \$43,000. Defendant failed to provide any explanation as to how or why it was
24 applying certain dollar values to her claims.

25 9. In its Notice of Removal, Defendant further estimated \$35,000 in attorney's fees for each
Plaintiff, bringing total damages for Plaintiff Lora Mote to approximately \$78,000. Per this

1 “estimate,” Plaintiffs’ attorney’s fees comprise 45% of the total damages award.

2 10. In class actions, attorney’s fees range from 20-33%.

3 I declare under penalty of perjury under the laws of the State of California and the United
4 States of America that the foregoing is true and correct.

5 Executed this 25th day of February, 2008, at Oakland, California.

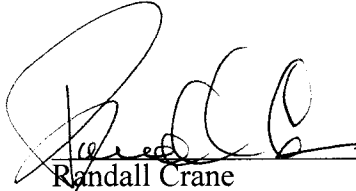
6
7
8 
9 Randall Crane
Declarant

EXHIBIT 1

Declaration of Randall Crane in Support of Plaintiffs' Motion to Remand
Case No.: C 08-00852 PJH

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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 04 2008

**CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy**

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JACQUELYN HARRIS, LORA MOTE, and
COURTNEY COLIANNA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

RWS ENTERPRISES WHICH WILL DO
BUSINESS IN CALIFORNIA AS KIDDIE
KANDIDS, INC., and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

08364316

CLASS ACTION

**COMPLAINT FOR FAILURE TO PAY
OVERTIME WAGES, FAILURE TO
PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS, FAILURE TO
PROVIDE MEAL AND REST BREAKS,
INJUNCTIVE COMPLIANCE WITH
CALIFORNIA LABOR CODE,
UNLAWFUL BUSINESS PRACTICES
AND FAILURE TO TIMELY PAY FINAL**

JURY TRIAL DEMANDED

Plaintiffs JACQUELYN HARRIS, LORA MOTE, and COURTNEY COLIANNA, on behalf of
themselves and all others similarly situated, and on behalf of the general public allege:

PARTIES

1. JACQUELYN HARRIS, LORA MOTE, and COURTNEY COLIANNA (hereinafter
referred to as "Named Plaintiffs"), were at all relevant times herein employed by DEFENDANT

1 RWS ENTERPRISES WHICH WILL DO BUSINESS IN CALIFORNIA AS KIDDIE
2 KANDIDS, INC. (hereinafter "Defendant" and/or "Kiddie Kandids") as store managers.

3 2. Defendant is a Nevada corporation that provides photography services to the general
4 public throughout the State of California, including in the County of Alameda.

5 3. The CLASS ("Plaintiff Class") is defined as all of Defendant's employees who, at any
6 time within the four years prior to filing this complaint, were classified by Defendant as
7 "managers" or a similar or equivalent designation, and who were deemed by Defendant as
8 exempt from receiving overtime compensation, yet who did not customarily and regularly direct
9 the work of two or more other employees or who otherwise did not meet the legal definition for
10 overtime exemption under California law. The Class and the Named Plaintiffs are hereinafter
11 collectively referred to as "Plaintiffs."

12 4. The SUBCLASS ("Plaintiff Members of the Sub-Class") is defined as all of Defendant's
13 employees who, at any time within the four years prior to filing this complaint, were classified
14 by Defendant as "managers" or a similar or equivalent designation, and who were deemed by
15 Defendant as exempt from receiving overtime compensation, yet who did not customarily and
16 regularly direct the work of two or more other employees or who otherwise did not meet the
17 legal definition for overtime exemption under California law, and upon leaving employment,
18 were not paid all wages earned and owed to them.

19 5. Named Plaintiffs bring this action on their own behalf, on behalf of the general public,
20 and on behalf of all "aggrieved persons" and all other persons similarly situated within the
21 Plaintiff Class of employees who were not paid as required by the California Labor Code and
22 who were employed by Defendant within the State of California at any time between the date
23 four years prior to the filing of this complaint and the date of entry of judgment after trial.

24 6. Named Plaintiffs do not know the true names or capacities of Defendants sued herein as
25 Does 1 through 50, inclusive, and for that reason, Named Plaintiffs sue these Defendants by such

1 fictitious names. Named Plaintiffs will seek to amend this Complaint and include these Doe
2 Defendants' true names and capacities as soon as they can be reasonably ascertained. Each of
3 the fictitiously named Defendants is responsible in some manner for the conduct alleged herein
4 and for the injuries suffered by the Plaintiffs and the general public.

5 7. Unless otherwise alleged in this complaint, Named Plaintiffs are informed and believe,
6 and on that basis allege that, at all times relevant herein, Defendants were each the agents and
7 employees of their co-defendants and in doing the things alleged in this complaint were acting
8 within the course and scope of that agency and employment.

9 CLASS ACTION ALLEGATIONS

10 8. Named Plaintiffs bring this action on their own behalf and on behalf of all persons
11 similarly situated.

12 9. The Plaintiff Class consists of all persons defined in paragraph 3, above.

13 10. Named Plaintiffs are informed and believe that the class is so numerous that joinder is
14 impractical.

15 11. There is a well-defined community of interest in the questions of law and fact affecting
16 the class of persons that Named Plaintiffs represent as a whole. Each member of the Plaintiff
17 Class was entitled to be paid in accordance with the provisions of the California Labor Code,
18 including but not limited to those provisions relating to payment of wages for hours worked,
19 payment of overtime wages, provision of mandated meal and rest breaks, indemnification for all
20 expenses and losses, and payroll deductions. Each member of the Plaintiff Class was not paid in
21 accordance with the provisions of the California Labor Code.

22 12. Named Plaintiffs will fairly and adequately represent the interests of the Plaintiff Class
23 because Named Plaintiffs are members of the class and none of the Named Plaintiffs have an
24 interest that is antagonistic to the interests of the Plaintiff Class.

25 13. The claims of Named Plaintiffs are typical of those of every other member of the Plaintiff

1 Class.

2 14. Named Plaintiffs request permission to amend the complaint to include other individuals
3 as class representatives in the event that Named Plaintiffs, or any one of them, are deemed not to
4 be adequate representatives of the Plaintiff Class.

5 15. Common questions of law and fact apply to all members of the Plaintiff Class as stated
6 herein so that a class action is superior to other forms of action. A class action is superior to any
7 other form of action, because a representative action without the benefits of class certification
8 will not allow for a "fluid recovery" or *cy pres* relief, and individual actions could result in a
9 multiplicity of suits with inconsistent adjudications subjecting Defendants to multiple judgments
10 without the benefits of *res judicata* resolution.

11 GENERAL ALLEGATIONS

12 16. During the last four years, Defendant has misclassified many of its employees as being
13 exempt from receiving overtime pay because Defendant internally classifies them as "store
14 managers." However, under California law, Plaintiffs do not meet the definition of an overtime
15 exempt employee and are entitled to receive overtime compensation. As a result, Defendant has
16 failed to pay Plaintiffs for overtime hours actually worked. This practice results in significant
17 financial damages to Plaintiffs.

18 FIRST CAUSE OF ACTION 19 Failure to Pay Overtime Wages (Violation of Labor Code §1194)

20 17. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege
21 said allegations as if fully set forth herein.

22 18. During the last four years, and at all relevant times in this Complaint, Plaintiffs were not
23 exempt from receiving overtime compensation.

24 19. During the last four years, and at all relevant times in this Complaint, Defendant required
25 Plaintiffs to work in excess of 8 hours per day, and/or in excess of 40 hours per week in violation

1 of Labor Code §§ 510 and 1198, during which time Plaintiffs were required to be under the
2 direct control and supervision of Defendant.

3 20. During the last four years, and at all relevant times in this Complaint, Plaintiffs were
4 entitled to receive one-and-one half times the hourly wage for each hour worked past 8 hours in
5 one day, one-and-one half times the hourly wage for each hour worked past 40 hours in one
6 week, and twice the hourly wage for each hour worked past 12 hours in one day and for hours
7 worked during the seventh consecutive workday.

8 21. During the last four years, and at all relevant times in this Complaint, Defendant has
9 intentionally and improperly designated managers, including Plaintiffs, as "exempt" managers in
10 order to avoid payment of overtime wages and other benefits in violation of the Labor Code and
11 the IWC Wage Orders.

12 22. Pursuant to Labor Code § 1194, Plaintiffs seek to recover in a civil action the unpaid
13 balance of the full amount of the unpaid overtime compensation, including interest thereon,
14 reasonable attorney's fees, and costs of suit.

15 23. Plaintiffs further seek penalties for Defendant's overtime violations as provided by the
16 Labor Code.

17 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter requested.

18 **SECOND CAUSE OF ACTION**
19 **Failure to Provide Accurate Itemized Wage Statements**
(Violation of Labor Code §226)

20 24. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege
21 said allegations as if fully set forth herein.

22 25. At all times herein relevant, Labor Code §226 and the IWC Wage Orders required
23 that employers provide employees with itemized wage statements showing total hours worked.
24 Labor Code §226(e) provided that if an employer knowingly and intentionally fails to provide a
25 statement itemizing the total hours worked by the employee, then the employee is entitled to

1 recover the greater of all actual damages or \$50 for the initial violation and \$100 for each
2 subsequent violation, up to \$4,000, plus costs and reasonable attorney's fees.

3 26. Defendant knowingly and intentionally failed to furnish Plaintiffs with timely,
4 itemized statements showing the total hours worked by each of them, as required by Labor Code
5 §226(a). As a result, Defendant is liable to Plaintiffs for the amounts provided by Labor Code
6 §226(e) for the applicable liability period prior to the filing of this Complaint, up to and
7 including the present.

8 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter requested.

9 **THIRD CAUSE OF ACTION**
10 **Failure to Provide Adequate Meal Periods**
(Violation of Labor Code §§ 226.7 and 512)

11 27. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege
12 said allegations as if fully set forth herein.

13 28. At all times herein relevant, Labor Code §§ 226.7 and 512 and the IWC Wage Orders
14 provided that employees must receive a first meal period of not less than thirty (30) minutes
15 before working more than five (5) hours, and a second meal period of not less than thirty (30)
16 minutes before working more than ten (10) hours per day.

17 29. Because Defendant failed to provide the required meal breaks, it is liable to Plaintiffs for
18 one (1) hour of additional pay at the regular rate of compensation for each workday that the
19 proper meal periods were not provided, pursuant to Labor Code §226.7 and IWC Wage Orders,
20 for the applicable liability period prior to the filing of this Complaint, up to and including the
21 present.

22 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter requested.

23 **FOURTH CAUSE OF ACTION**
24 **Failure to Provide Adequate Rest Breaks**
(Violation of Labor Code § 226.7)

25 30. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege

1 said allegations as if fully set forth herein.

2 31. At all times herein relevant, Labor Code §§ 226.7 and the IWC Wage Orders provided
3 that employees must receive rest periods of not less than ten (10) minutes for each four (4) hours
4 of work.

5 32. Because Defendant failed to provide the required rest breaks, it is liable to Plaintiffs for
6 one (1) hour of additional pay at the regular rate of compensation for each workday that the
7 proper rest periods were not provided, pursuant to Labor Code §226.7 and IWC Wage Orders,
8 for the applicable liability period prior to the filing of this Complaint, up to and including the
9 present.

10 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter requested.

11
12 **FIFTH CAUSE OF ACTION**
Inunctive Compliance with the Business and Professions Code
13 **(Violation of Business & Professions Code §17200)**

14 33. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege
15 said allegations as if fully set forth herein.

16 34. At all material times, Plaintiffs are and were affected Plaintiffs with injuries in fact within
17 the meaning of Business & Professions Code § 17204.

18 35. Plaintiffs allege, on information and belief, that during the last four years and to the
19 present date, Defendant has knowingly engaged in unlawful business practices and unlawful
20 labor practices in committing the acts alleged herein.

21 36. The acts of Defendant, as herein alleged, constitute unlawful, unfair and fraudulent
22 business practices in that they deprive of lawfully earned wages in order to unfairly compete in
23 the marketplace.

24 37. Defendant's violations of California law, as alleged herein, constitute unlawful business
25 practices because such violations were done in a systematic manner and under the color of a
business decision to detriment of the Plaintiffs.

38. Defendants' acts, as alleged herein, constitute acts of unfair competition within the meaning of Business and Professions Code §17203. Plaintiffs are informed and believe and thereon allege that Defendant is currently engaged in and will continue to engage in the above-described unlawful acts unless the Court orders the Defendant to cease and desist. As a result of the unfair business practices of Defendant alleged herein, Plaintiffs are entitled to injunctive relief as herein provided.

WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter requested.

SIXTH CAUSE OF ACTION
Unlawful Business Practices
(Violation of Business & Professions Code §17200)

39. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege said allegations as if fully set forth herein.

40. At all material times, Plaintiffs are and were affected Plaintiffs with injuries in fact within the meaning of Business & Professions Code § 17204.

41. Plaintiffs allege, on information and belief, that during the last four years and to the present date, Defendant knowingly engaged in unlawful business practices and unlawful labor practices as described above to reduce their overall costs of doing business.

42. The acts of the Defendant, as herein alleged, constitute unlawful, unfair and fraudulent business practices in that they deprive Plaintiffs of lawfully earned wages in order to unfairly compete in the marketplace.

43. Defendant's violations of California law, as alleged herein, constitute unlawful business practices because such violations were done in a systematic manner and under the color of a business decision to the detriment of Plaintiffs.

44. Defendant's acts, as alleged herein, are acts of unfair competition within the meaning of the Business and Professions Code § 17203.

45. As a result of Defendant's unlawful, unfair, and fraudulent business practices, and unfair

1 competition within the meaning of Business and Professions Code § 17200 *et seq.*, Plaintiffs
2 have suffered the loss and enjoyment of their lawful property in the form of overtime wages and
3 other compensation earned and yet unpaid, in an amount to be proved a time of trial.

4 46. As a result of the unfair business practices of Defendant as alleged herein, Plaintiffs are
5 entitled to restitution of their property.

6 47. Plaintiffs have incurred and, during the pendency of this action, will continue to incur
7 expenses for attorneys' fees and costs herein. Such attorneys' fees and costs are necessary for
8 the prosecution of this action and will result in a benefit to Plaintiffs and other individuals
9 lawfully classified as bona fide employees in California. Plaintiffs are, therefore, entitled to
10 reasonable attorneys' fees as private attorneys general under California Code of Civil Procedure
11 § 1021.5.

12 **SEVENTH CAUSE OF ACTION**
13 **Failure to Pay Wages Upon Termination**
(Violation of Labor Code §201 *et seq.*)

14 48. Plaintiffs hereby incorporate each and every allegation contained above, and re-allege
15 said allegations as if fully set forth herein.

16 49. Labor Code § 201 requires employers, including Defendant, to pay all wages earned and
17 unpaid immediately upon discharge or layoff of an employee.

18 50. Labor Code § 202 requires employers, including Defendant, to pay all wages earned and
19 unpaid no later than 72 hours of receiving an employee's notice of intent to quit or immediately
20 at the time of quitting if the employee provided at least 72 hours notice of intent to quit.

21 51. Plaintiff Members of the Sub-Class did not receive all wages earned and unpaid at the
22 time they were terminated or within 72 hours of giving notice of intent to quit.

23 52. Plaintiff Members of the Sub-Class are still owed wages and premiums as described
24 herein.

25 53. Defendant violated Labor Code §§201 or 202 and IWC Wage Orders when it failed to

1 pay all earned and unpaid wages to employees who were discharged or quit or were laid off,
2 including Plaintiff Members of the Sub-Class.

3 54. As a consequence of violating Labor Code §201 or §202, Defendant is subject to all
4 applicable civil penalties including those specified pursuant to Labor Code §203. The exact
5 amount of the applicable penalty is in an amount to be proven at time of trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

8 **AS TO THE FIRST CAUSE OF ACTION:**

9 1. For compensatory damages in an amount according to proof at time of trial representing
10 the amount of unpaid overtime compensation owed to Plaintiffs for the applicable liability period
11 prior to the filing of this Complaint, up to and including the present;

12 2. For interest calculated according to law on any overtime compensation due from the day
13 such amounts were due for the applicable liability period prior to the filing of this Complaint, up
14 to and including the present;

15 3. For reasonable attorneys' fees and the costs of bringing this suit, pursuant to Labor Code
16 § 1194(a) and CCP § 1021.5;

17 4. For statutory interest and penalties.

18 **AS TO THE SECOND CAUSE OF ACTION:**

19 5. For compensatory damages in an amount according to proof at time of trial to Plaintiffs
20 for failure to provide accurate, itemized wage statements during the applicable liability period
21 prior to the filing of this Complaint, up to and including the present;

22 6. For the amounts provided by Labor Code §226(e) for the applicable liability period prior
23 to the filing of this Complaint, up to and including the present;

24 7. For reasonable attorneys' fees and the costs of bringing this suit, pursuant to CCP §
25 1021.5;

1 8. For statutory interest and penalties.

2 AS TO THE THIRD CAUSE OF ACTION:

3 9. For compensatory damages in an amount according to proof at time of trial representing
4 the amount of unpaid compensation owed to Plaintiffs for inadequate meal periods during the
5 applicable period prior to the filing of this Complaint, up to and including the present;

6 10. For reasonable attorneys' fees and the costs of bringing this suit, pursuant to CCP §
7 1021.5;

8 11. For unpaid meal breaks pursuant to Labor Code §§ 226.7 and 512 and the IWC Wage
9 Orders for inadequate meal periods during the applicable period preceding the filing of this
10 Complaint, up to and including the present;

11 12. For statutory interest and penalties.

12 AS TO THE FOURTH CAUSE OF ACTION:

13 13. For compensatory damages in an amount according to proof at time of trial representing
14 the amount of unpaid compensation owed to Plaintiffs for inadequate rest periods during the
15 applicable period prior to the filing of this Complaint, up to and including the present;

16 14. For reasonable attorneys' fees and the costs of bringing this suit, pursuant to CCP §
17 1021.5;

18 15. For unpaid rest breaks pursuant to Labor Code §§ 226.7 and 512 and the IWC Wage
19 Orders for inadequate rest periods during the applicable period preceding the filing of this
20 Complaint, up to and including the present;

21 16. For statutory interest and penalties.

22 AS TO THE FIFTH CAUSE OF ACTION:

23 17. For an order requiring Defendant to show cause, if any, why it should not be enjoined as
24 set forth herein above, during and after the pendency of this action;

25 AS TO THE SIXTH CAUSE OF ACTION:

18. For an order that Defendant pay restitution and/or disgorgement of sums to Plaintiffs for Defendant's past failure to pay wages in violation of the unfair competition laws, in an amount according to proof, for the four (4) years preceding the filing of this Complaint, up to and including the present;

AS TO THE SEVENTH CAUSE OF ACTION:

19. For consequential damages according to proof as set forth in Labor Code §201, et seq. (and all applicable California IWC wage orders relating to wages due and owing);

20. For reasonable attorney's fees, expenses and costs;

21. For waiting time penalties pursuant to Labor Code § 203; and

22. For interest accrued to date;

AS TO ALL CAUSES OF ACTION:

23. For an order certifying the Class and any appropriate subclasses thereof, and appointing Named Plaintiffs and their counsel to represent the Class;

24. For compensatory damages according to proof;

25. For special damages according to proof;

26. For injunctive relief requested herein;

27. For an award of restitution and/or disgorgement according to proof;

28. For the costs of bringing the suit;

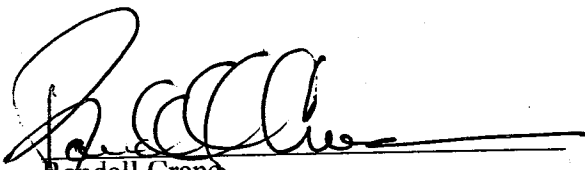
29. For reasonable attorney's fees;

30. For statutory penalties; and

31. For such other and further relief this Court may deem just and proper.

Dated: December 19, 2007

LAW OFFICE OF RANDALL CRANE


Randall Crane
Attorney for Plaintiffs